IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Smt. Lichhma vs. Ladu Ram & ors.

S.B. Civil Second Appeal No.25/1984 against the judgment and decree dated 16.12.1983 passed by the Addl. District Judge, Sri Ganganagar in Civil Appeal No.56/1980.

Date of Judgment: February 22, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Rajendra Mehta & Mr. M.R. Mehta, for the appellant.
Mr. S.L. Jain for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

This appeal is against the judgment and decree of the trial court dated 12.10.1979 passed in Civil Original Suit No.24/1974 by which the trial court decreed the suit of the plaintiff so far as injunction is concerned and restrained the defendants from evicting the plaintiff from the agricultural land measuring 42 bighas by force, however, the trial court also observed that the defendants will be free to take the possession of the properties from the plaintiff by following due process of law. The decree and judgment of the trial court dated 12.10.1979 was challenged by the plaintiff-appellant with a claim that she was entitled to relief of declaration that she is *khatedar* tenant of the

agricultural land measuring 42 bighas and she had ¾ share in the house of deceased Chetan Ram and she is entitled to get the sale-deeds executed in favour of defendants no.3 to 5 cancelled as has been executed by the defendant Ladu Ram without authority of law. The first appellate court dismissed the appeal of the plaintiff-appellant by the judgment and decree dated 16.12.1983. Hence this second appeal.

The second appeal was admitted on 8.8.1985 after framing the following substantial question of law:-

"Whether the document Ex.2 was wrongly held as inadmissible in evidence for want of registration ?"

Brief facts of the case are that the plaintiff submitted that some properties of Chetan Ram were there which are described in the plaint. Chetan Ram died in the year 1956, after coming into force of the Hindu Succession Act, 1956, however, she pleaded that as per the old Hindu Law, the agricultural land of deceased Chetan Ram was mutated in the name of Chetan Ram's son Mohan Lal despite the fact that the plaintiff was daughter of deceased Chetan Ram and wife of Chetan Ram, Smt. Rukama was also alive. Mohan Lal died on 23.11.1962, thereupon mutation was again opened for the agricultural land and ultimately, the land was recorded in the name of plaintiff Lichhma daughter of deceased Chetan Ram and Rukama wife of Chetan Ram with equal

share.

According to the plaintiff, defendant no.1 Ladu Ram claimed that he was adopted by Smt. Rukama on 21.12.1962 after the death of Chetan Ram's son Mohan Lal. This adoption was followed by registered adoption deed. According to the plaintiff, said adoption was void and cannot affect the rights of the plaintiff.

The plaintiff further pleaded that after the death of Smt.Rukama, some dispute arose between the plaintiff and defendant no.1, upon which with the help of number of persons, a settlement was arrived at and a deed was executed on 13.7.1968 wherein defendant no.1 admitted that he will not have share in the agricultural land for more than 14 bighas. Despite all these facts, the defendant sold 14 bighas of land to one Rahu Ram and Rahu Ram's son and delivered the possession to the purchasers. Defendant no.1 Ladu Ram further sold 9 bighas of land to defendants no.3 to 5 on 28.4.1974 by registered sale-deed. The plaintiff claimed that the sale-deed executed by Ladu Ram was void ab initio and, therefore, she filed the suit for declaration that in view of the settlement deed dated 13.7.1968, the plaintiff is owner/khatedar tenant of 42 bighas of agricultural land and also prayed that she may be declared having ¾ share in the properties of deceased Chetan Ram. She also prayed that the sale-deeds executed in favour of defendants no.3

to 5 by defendant no.1 may be declared null and void. The plaintiff also claimed relief of permanent injunction against the defendants from evicting the plaintiff from the agricultural land.

The defendants contested the suit and pleaded that Mohan Lal succeeded in the properties because Chetan Ram died before coming into force of the Act of 1956 and, therefore, Mohan Lal became the sole owner of the entire property of Chetan Ram. Mohan Lal died and thereafter since Smt.Rukama adopted Ladu Ram, therefore, Mohan Lal became the owner of the all properties of deceased Chetan Ram. The defendants denied settlement deed dated 13.8.1968 and pleaded that defendant no.1 had full right to sell the properties.

Both the parties led their evidence which were considered by the trial court and the trial court held that ChetanRam died before 1956 and, therefore, the property was rightly mutated in the name of Mohan Lal. After the death of Mohan Lal, the property devolved upon Smt. Rukama and after the death of Smt. Rukama, the property devolved upon Rukama's daughter Lichhma as well as Ladu Ram adopted son of Smt.Rukama. The trial court while deciding issue o.1 rejected the plaintiff's claim that she is Khatedar tenant of 42 bighas of agricultural land as well as the plaintiff's contention that she is owner of ¾ share in the house. However, the trial court very specifically while deciding issue no.1 itself, held that plaintiff is khatedar tenant of 28 bighas of the

land which comes to ½ of the total agricultural land of Chetan Ram. The trial court also held that the plaintiff Lichhma has ½ share in the house. The trial court held that the plaintiff failed to prove the settlement deed dated 13.7.1968(Ex.2), therefore, she cannot say that the defendant Ladu Ram kept only 14 bighas of the land out of the properties of deceased Chetan Ram. Despite holding that the plaintiff has ½ share in the entire properties of deceased Chetan Ram, the trial court under assumption that since the trial court has not decided the issue no.1 completely in favour of plaintiff, therefore, the sale-deed executed by defendant no.1 in favour of defendant no.3 to 5 even to the extent of share of plaintiff in the property cannot be cancelled or can be declared ineffective against the interest of the plaintiff. At this stage, it appears that the trial court missed the fact that the trial court itself found Lichhma-plaintiff owner of ½ of the properties, meaning thereby declared her to be co-sharer in the properties of defendant no.1.

In the appeal against the judgment and decree of the trial court dated 12.10.1979, appellate court maintained the finding of the trial court that Chetan Ram died before the year 1956. The first appellate court also held that the plaintiff failed to prove Ex.2, alleged settlement between the parties. The first appellate court also concurred with the finding that the plaintiff and defendant no.1 both had equal share in the

property. Even after deciding issues as mentioned above, the first appellate court dismissed the appeal of the appellant. Hence this second appeal.

The second appeal was admitted by this Court on the substantial question of law framed as mentioned above.

It appears from the facts of the case mentioned above itself that Ex.2 was never declared inadmissible in evidence by the courts below for all purposes. Ex.2 is a document which the two courts found not true, therefore, the rest of the question whether any right passes to the plaintiff or not becomes irrelevant. Even if it is held that the document could have been admitted in evidence for main purpose, namely for proving the title of the property in the plaintiff even then when the document is not proved, the plaintiff cannot get any benefit from the document Ex.2. Therefore, though substantial question of law was framed by this Court while admitting the appeal that whether the document Ex.2 was wrongly held as inadmissible in evidence for want of registration? But on close scrutiny it appears that that question does not arise in this appeal because the document was admitted in evidence but found not proved.

Since the two courts below concurrently held that Chetan Ram died before the year 1956 leaving behind Mohan Lal as heir and Smt. Rukama did not claim that she being widow of deceased Chetan Ram has

right of maintenance from the properties and that right fructified in full ownership. If the two courts below held that Mohan Lal became the owner of the properties, the two courts below have not have committed any error of law but even if it is held that at the time of death of Chetan Ram, widow had right of maintenance from the property and she was in possession of the property, she acquired absolute ownership in the property, even then that fact is not very much material because of the simple reason that Smt.Rukama also died intasted in the year 1968 leaving behind only two successors Ladu Ram and plaintiff Lichhma. In view of the above, the net result, irrespective of nature of the right of Smt.Rukama at the time of death of Chetan Ram, the property ultimately devolved upon plaintiff Lichhma and defendant no.1 Ladu Ram. The two courts below, therefore, rightly declared that the plaintiff has ½ share in the entire properties of deceased Chetan Ram. The trial court, therefore, committed error of law in not declaring the sale-deeds in favour of defendants no.3 to 5 as null and void against the interest of plaintiff Lichhma to the extent of share of plaintiff Lichhma. The decision of the trial court given on issue no.3 wherein the trial court merely observed that since issue no.1 has been decided against the plaintiff, therefore, sale-deeds executed by Ladu Ram for 9 bighas of land in favour of defendants no.3 to 5 cannot be declared illegal, null or void, is contrary to law. The trial court as well as the first appellate

court both missed the settled position of law that in case larger relief has been claimed, the court can grant lesser relief. In this case, the plaintiff claimed 42 bighas of land whereas in fact she was entitled to 28 bighas of the land which is ½ of the property instead of ¾. The trial court specifically held that the plaintiff is entitled to ½ share in the entire property of Chetan Ram and still decided issue no.3 against the plaintiff which cannot be sustained. In view of the above, the decree as granted by the courts below deserves to be modified.

Hence the appeal of the appellant is partly allowed and it is declared that the plaintiff has ½ share in the property of Chetan Ram and she cannot be evicted from the properties which are in possession of the plaintiff without getting partition of the properties by the defendants. However, it is made clear that since the plaintiff is admittedly in possession of 42 bighas of agricultural land, therefore, she cannot be evicted from 42 bighas of the land without obtaining a decree for eviction of the appellant from the excess land which can be done only after partition of the properties of Chetan Ram if still remedy is available.

(PRAKASH TATIA),J.

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